

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF)
CHANCE ALONG FARM, INC. FOR AN)
AQUACULTURE LEASE LOCATED IN)
YORK RIVER, YORK, YORK COUNTY, MAINE)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On February 5, 2001 Chance Along Farm, Inc. of Freeport, Maine applied for a standard aquaculture lease totaling 3.96 acres in the coastal waters of the State of Maine, located west of Sewall Bridge, York River, York, York County, Maine. The applicant requested the lease for a term of ten years for the purpose of cultivating American oysters (Crassostrea virginica), European oysters (Ostrea edulis), surf clams (Spisula solidissima) and quahogs (Mercenaria mercenaria) using bottom culture techniques.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a standard lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on April 16, 2002 at 7:00 p.m. in York.

**Evidence Concerning the Nature and
Impact of the Proposed Lease**

The applicant's representatives were the Horne family members: Eric L. Horne (manager), Valy M. Steverlynck Horne, and Peter J. Horne, president of Chance Along Farm, Inc. The representatives provided testimony on the proposed lease activities and the application. The manager explained that they attended meetings of the York River Association

and notified local resident Carolyn Donnelly (York River Association member) updates on the application and information on the status hearing date. Exhibits 1, 2 and 4.

The manager testified that the lease operation would consist of planting indigenous American oysters directly on the bottom. The president testified that the other species listed in the application would be withdrawn from the lease application to address concerns expressed by public commentators during the hearing. Seed oysters would be transferred to test the area for its feasibility as a grow-out location. Native seed would be obtained from the Chance Along Farm, Inc. nursery lease in Freeport or from hatcheries or other nurseries located within Maine such as Marshall Point Sea Farm, LLC or Muscongus Bay Aquaculture, Inc.

The manager explained that the proposed schedule of activities would begin with seeding of oysters on the bottom by hand. Planting would occur during the months of June through December annually, although primarily in December when the predatory green crab activity is at its lowest. A large seed oyster, up to 1.5-inches, would be planted to avoid green crab predation. He testified that it would take 2-3 years for the oysters to grow to approximately 3-inches or marketable size. Harvesting would take place 1-2 days per week, on back-to-back days, during the months of April through November. Maintenance or survey work would be accomplished by SCUBA diving. The manager testified that he would be willing to accept a condition to not work on the site (harvest or SCUBA dive) on weekends during the summer in response to diver safety and vessel traffic concerns expressed by the local DMR Marine Patrol Officer and by public commentators during the hearing.

Activities at the proposed lease would be accomplished using a 22' Carolina skiff powered by a quiet 4-stroke, 40-horse power Honda engine. The boat would be trailered to and from the area with access gained at a nearby public landing. A lightweight hand-held oyster dredge was displayed during the hearing that would be used to harvest oysters when they reach marketable size. The oyster dredge has an estimated 24-inch wide opening at the front of a small steel frame, 16 small round-stock tines spaced evenly across the bottom of the frame

opening, a top bail or bag consisting of 1 – 1 ¼ inch mesh twine, a bottom bail constructed of standard steel rings and links, frame materials consisting of ½-inch steel stock and an aluminum top plate. The total weight was estimated to be about 20-25 pounds and, as was demonstrated, could easily be lifted by one person. This type of dredge is designed to skim or bump over the bottom, not to rake or dig into the bottom as that would damage the thin growing edges of oysters. The manager testified that the oyster dredge would be towed at a slow rate of 2-3 mph for short 20-30 foot distances for a maximum of 4 hours on a harvest day. It was explained that a harvest of 6 totes of oysters would take a much greater amount of time to cull (separate the sizes of oysters) than it would to haul or harvest the oysters. Diving would be used to check the oysters or for seeding. Diving would not be used for harvest for safety reasons due to the strong currents in this area. No structures of any kind would be deployed except the mandatory boundary marker buoys that are proposed to be standard 7.5" diameter acorn buoys.

The north and south sides of the proposed lease site are bounded by shallow intertidal mud flats that extend to the shoreline. According to the application the water depths drop off quickly from near zero along the north and south sides that parallel the shore, to approximately 15 feet at low tide. The proposed site has a flat uniform topography. The current flows east and west on the ebb and flood respectively at an average of 1-1.5 knots. The bottom sediments are described as firm sandy mud consisting of sand size particles. The manager testified that while diving the proposed lease he has found the bottom to be a firm gravel and sand substrate similar to a gravel driveway with a shifting heavy sand bar along the center portion. Flora consists of some green seaweed along the edge of the channel and intertidal flats. The manager testified that during his dives he has not observed any mussel or shellfish beds. Fauna consists of a few rock crabs and an abundance of green crabs. The president testified that the green crab population, in general and including the York River, is far more abundant now than 10 years ago, with few lobsters found in the upper portions of the York River, and

stated that he confirmed this with Pat White, a resident of York, and well known lobster catcher and past president of the Maine Fishermen's Association.

The president testified that an adult oyster filters about 50 gallons of water a day. The oyster also uses nitrogen and additional nutrients in the water from run-off. He described an oyster bed as one that acts as additional habitat for other lower food-chain forms of marine life such as copepods and organisms that live on the seafloor. The president explained that the American oyster has the ability to slough off sediments that may cover it, such as from the shifting sand bar previously described. In his opinion neither the oysters themselves nor stirred sediments from the use of a small oyster dredge would pose an ecological risk in the area of the proposed lease site or river, particularly when compared to the silver color denoting mixed sediments in the river on windy days. This color is indicative of the mud flat sediments being stirred into the water by the wind. In his opinion, the amount of resuspended fine sediments that naturally occur is exponentially greater than the limited amount of heavier sand and gravel that would be resuspended by a small oyster dredge as the heavier sediments would settle quickly and nearly directly back to the bottom.

The president testified that they would accept a change in the lease dimensions from the physical description in the application, describing the dimensions as 702 feet by 248 feet, to match the requested size of the proposed lease of 3.96 acres, whereby the northwest and southwest corners would be moved easterly along the proposed boundaries bearings towards the northeast and southeast corners. This would insure that the dimensions and geodetic coordinates result in bounding the equivalent area of 3.96 acres, not a greater acreage as described in the report of the Department's biologist.

According to the application the proposed lease is well east of York Harbor and beyond the Sewall Bridge. The nearest aquaculture lease is located nearby due east. According to the application and testimony by the president, the nearby leaseholder is aware of this application and does not object to it. The manager testified that sport fishers frequent the York River from

spring through early fall, particularly on the weekends. Kayaks, paddlers or small vessels have also been observed. According to the application boating and recreational fishing would be compatible with the proposed lease.

The president testified that he was aware that the York River is closed to lobster harvest and he based his opinion of impact to lobsters in the upper river as minimal based on conversations with Pat White, a person he considers knowledgeable of lobsters there.¹ See previous reference to Pat White on page 4.

The president testified in response to concerns regarding lobsters and impacts from the use of drags. By way of example, he described the co-existing active lobster fishery and high number of shellfish leases in the Damariscotta River in which dragging for cultured shellfish takes place on a daily basis alongside lobster and crab trapping. He described the New Meadows River as a similar area that has co-existing leases, dragging and lobster fishing. He testified that when towing an oyster dredge at 2 knots that he has observed small lobsters able to move quickly out of the way of a dredge towed at that slow speed.

The Department's Aquaculture Environmental Coordinator (a Department biologist) and his assistant conducted a site visit on January 12, 2001 and August 24, 2001. The biologist's report included a SCUBA diver survey of the local flora and fauna and bottom composition; vertical profiles of temperature, salinity and depth; proximity to shore; local fisheries and other leases. According to the biologist's report, the location of the corner buoys were verified and repositioned using a survey quality differential Global Positioning System (dGPS) device.

The topography is described as a scoured main channel that slopes steeply upward as the shore is approached to the north and south sides with the proposed boundary extending to the mean low water (MLW) lines. The proposed site is located approximately 185 feet due east of the nearest existing lease; ranges approximately 0 – 200 feet between the corners and high water on shore across the mud flats; approximately 715 feet due east to the nearest private

¹ DMR Chapter 25.03 Taking of Lobsters in York River: No person shall catch, take or trap lobsters in York River, York County, from its source to a line running from Rock's Nose, so-called, to the red painted rock on Stage Neck, so-called, on the opposite shore.

dock; and approximately 1422 feet down river to the Sewall Bridge. No moorings were observed within the proposed lease vicinity. On the north shore there is a golf course and the adjacent southern shore appeared to be uninhabited.

The biologist testified that he took an underwater video in which the proposed lease was surveyed in a zigzag pattern between the north and south mean low water lines, from east to west. Depth measurements at the corners ranged from approximately 2 – 13 feet at MLW with a mean tidal range of 8.6 feet. The local flora was limited to kelp, knotted wrack and an unidentifiable brown algae; no eelgrass was noted. Local fauna included an abundance of empty surf clam and soft-shell clam shells and patchy abundance of the mud dog whelk. Green crabs and golf balls were commonly observed throughout the dive. Occasional or single observations were made of the American oyster, a flounder type flatfish, a rock crab and two lobsters (one no-claw). The biologist testified that during the month of August he fully expected to observe numerous lobsters in the area, if it were lobster habitat. His sense of the claw-less lobster was that it was trying to avoid other (carnivorous) lobsters by hiding upriver in that area away from other lobsters. The biologist stated that based on his 20 years as a biologist and diver, and assuming that if there were more lobsters around, the relatively small size of the proposed oyster dredge and its described use would not pose ecological harm to the habitat or lobsters. In his opinion, the relative small size of the oyster dredge is not comparable to a dredging operation for the purpose of deepening a navigation channel or harbor basin. Also, according to the biologist's report the proposed lease does not fall within a Department of Inland Fisheries and Wildlife (IF&W) designated Essential Wildlife Habitat for Endangered or Threatened species.

Nothing unusual was noted in the temperature, dissolved oxygen or salinity recordings collected on August 24, 2001. The biologist's report indicated that the temperature, dissolved oxygen or salinity levels are adequate for the cultivation of shellfish. The area is classified as "open" for the harvest of shellfish according to the Department's Public Health Division.

The biologist testified that there are no public parks or dock facilities within 1,000 feet that the proposed lease would pose interference to. In his opinion, other than the corner marker buoys, navigation of the area would not be impeded by the proposed bottom only lease activities.

The biologist contacted the local harbormaster regarding ice, navigation, moorings and traditional storm anchorages. The harbormaster confirmed that the proposed lease site does not ice over in the winter, however it may experience sporadic “pan ice” flows exiting the river. There are no moorings issued in the general area of the proposed lease. Regarding navigation, the harbormaster indicated that vessel traffic is limited to small boats, such as skiffs and an occasional larger vessel. Larger vessels are restricted to access due to the low clearance under the Sewall Bridge at high water. High tide access is available up river approximately 1-mile at the Scotland Bridge. He indicated that the area is used heavily for recreational fishing for striped bass and that there could be 4-5 boats on a weekend day in the proposed lease area. In the harbormaster’s opinion, he did not expect interference with uses of the area given that the application was for bottom use only without any structures.

The biologist also contacted the local Marine Patrol Officer (MPO) who gave similar descriptions of the area use for striped bass fishing and indicated that the only commercial fishing that may also occur there is for eel or green crabs. The MPO expressed concern for diver safety at the posed site, particularly at MLW as navigation becomes restricted to the main channel and the river is shallow. He suggested that if the lease were granted that no diving and or harvest occur during the more heavily trafficked times; i.e. summer weekends and the holidays between Memorial Day and Labor Day weekends.

Several residents and/or lobster fishers testified that they opposed the use of the small oyster dredge as the method of harvest. In their opinion, the potential level of resuspended sediments in the water column by the use of the dredge would negatively impact lobster, striped bass, other ecological factors and potentially increase the rate of sedimentation in the York

River Basin such that it would impose greater expense to the Town for dredging of York Harbor and Basin by increasing the rate at which it would have to be dredged. Concerns were also expressed that the SCUBA diving activity and bottom lease activities would pose interference with navigation due to either the narrow width of the river, particularly at low tides, interference with boaters who wish to drive fast, or due to the volume of recreational or resident boaters in the area. One resident who opposed the proposed lease indicated there are 50 boats per day in the area from May through October or December, weather dependent; that the proposed lease would interfere with a large volume of navigational traffic; and that a Department regulation protects the York River from leases or the use of mechanical dredges due to increased sedimentation on lobster breeding and shedding grounds which may also harm flounder habitat. It was also stated that the application could be refused based on an unsuccessful attempt many years ago by another person to raise European oysters, and by an assumption that the existing lease in the York River is prohibited from using dragging as a method of harvest.² The president explained that a basic difference between the European oyster and the American oyster is that American oyster has the ability to shake off sediments that may cover it, whereas the European oyster when covered up simply suffocate and dies. This earlier attempt did not occur at a time when a lease for the purpose of shellfish aquaculture was required and therefore no lease records exist on this project. Exhibit 5.

A resident who described himself as a lobster fisher and active fishing guide on the York River for many years, testified that he spends 5 out of 7 days during the warmer months fishing or guiding in the York River. In his opinion, the number of vessels has increased over time and would be estimated at 50 boats per weekend day and on a weekday typically 20-25. He supported the proposed lease, and in his opinion the representatives have good intentions. He suggested that the proposed lease would be more compatible with existing uses if the applicant raised only American oysters, clarified the correct dimensions for 3.96 acres, did not work the

² The existing lease in the York River is not prohibited from the use of dragging as a method of harvest; no stipulation is made on the type or restricted size of drag other than a standard legal size fishing drag that may be used during January – April.

proposed site on weekends during the summer and could find a way to address the bycatch of lobsters in the small oyster dredge to insure that problems do not arise.

For the purpose of clarification the record was reopened for the Department to obtain additional information on sedimentation impacts on striped bass, and the Army Corps of Engineers (ACOE) maintenance dredge work of the York River basin. The Department received evidence for the record from Senior Project Manager Jay Clement, Maine Project Office, ACOE, and from Deputy Commissioner Lewis Flagg in a memo accompanied by a referenced study. No further comments were received on these materials during the reopening of the record.

Mr. Clement indicated in a letter that the use of the proposed small oyster dredge is not considered dredging, that the sediment in the water column from dragging is considered a de minimus discharge when compared to the background turbidity levels that already exist in the river that include natural shoreline erosion, man induced erosion from boat wakes and construction, upland development, culverts and storm drains. In his opinion, the described bottom sediment of firm sand is even less likely to have a long-term effect to the water column because it tends to resettle faster than finer sediments like silts and clays. The sand would resettle before reaching the basin approximately 5,000 feet downstream where maintenance dredging occurs. In his opinion, the present ACOE maintenance dredge schedule is not likely to be affected. He explained that during the dredge work in 1996, the bulk of the material removed consisted of fine-grained sediments or silt likely transported from the sources he previously described.

Deputy Commissioner Lewis Flagg indicated that he was familiar with a study conducted on the early life stages of several species of fish including striped bass, in a North Carolina river where spawning occurs. In the study there was a negative impact on the eggs of striped bass when the turbidity was in excess of 1,000 parts per million (ppm). He noted that the only areas in Maine where striped bass spawning occurs is in the Kennebec River, Androscoggin River and at the confluence of 3 rivers in Merrymeeting Bay. In his opinion, the proposed use of a small

oyster dredge in the York River would not have a long-term impact to the striped bass resource, as it is not reproduction habitat for striped bass. If there was a great level of activity, of any sort, then the movement of striped bass might be displaced, on a temporary basis, of the fish from one area to another, however, no significant impact to striped bass eggs or striped bass by the proposed small oyster dredge would occur. He indicated that light-dragging activity might actually attract forage fish and predatory striped bass to the area if the proposed activity suspended benthic food organisms into the water column.

Findings of Fact

The proposed lease is located in water depths that range from approximately 0 to 15 feet at low tide and more or less abuts the low tide line on the north and south sides of the channel in the York River. The northeast corner is very close to the high water mark on the north shore and from the remaining 3 corners there would be 200 feet or greater distance of intertidal mud flats between the corners and the high tide shoreline. According to the biologist's report there is a golf course on the north shore and the immediate south shore is uninhabited land. The nearest private dock is located approximately 715 feet due east downriver and the Sewall Bridge approximately 1,422 feet, also downriver. The Department's biologist confirmed these distances during site visits on January 12, 2001 and August 24, 2001. According to the Department's biologist and the local harbormaster there are no moorings within the vicinity of the proposed lease. No riparian land was requested or required for the proposed activities. Access could be gained via public landing facilities located south beyond the Sewall Bridge or from a public facility located upriver approximately one mile on the other side of the Route I-95 overpass. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Some public commentators opposed to the proposed lease described the area as heavily used by recreational fishers, primarily for seasonal striped bass fishing and pleasure boaters during the warmer weather months of the year. In their opinion, the approximate width

of the channel at low tide and similar width of the proposed bottom lease of 248 feet are incompatible. According to the Department's biologist report and the application the proposed lease is located in a sandy gravel section of the river that is bounded by sod banks that rise up to and extend across mud flats for at least 200 feet with the exception of the northeast corner that is closer to the high tide shoreline. The proposed lease is situated approximately across the width of the low tide channel. According to the biologist's report safety concerns were expressed by the local Marine Patrol Officer that diving should be restricted during the more heavily trafficked summer season on weekends, particularly at low tides. The local harbormaster, the Department's biologist, the applicant's representatives and hearing commentators described to various degrees the type and volume of vessels that would typically be in the area with the most credible information being that during the summer week days there may be up to 25 vessels per day and on weekends and holidays the numbers double to roughly 50 vessels per day. The Sewall Bridge is a low bridge that restricts the height of vessels that may pass under it at high tide and, therefore, in general the typical watercraft is smaller such as kayaks, skiffs, or tends to be smaller size work vessels with larger vessels on occasion that are able to pass under the bridge at low tides. The Harbormaster and Department's biologist indicated that the bottom only use of the proposed lease would not be expected to cause interference with navigation. The manager testified that he would be willing to accept a condition to not work on the proposed site during the higher traffic periods that would include weekends and holidays during the summer (Memorial Day weekend through Labor Day weekend) for diver safety and vessel traffic concerns. Based on this evidence and testimony, I find that the lease will not unreasonably interfere with navigation given the condition that no activities occur on weekends or holidays from Memorial Day through Labor Day weekends.

The manager testified that sport fishing was busiest on the weekends and takes place from spring through early fall. According to the president, compared to ten years ago, the green crab population is much more prevalent now in the upper area of the York River with few

lobsters. In the president's opinion, the proposed activities would not have an impact on the lobster resource due to their low presence in the upper area of the river and high presence of the predatory green crabs. He based his opinion on information from a credible long time lobster harvester, industry representative and York resident. The president described the co-existence and compatibility of shellfish harvest by drag on a routine basis and lobster trapping such as in the Damariscotta and New Meadows' rivers. The manager testified that the frequency of harvesting by drag would be limited to 2 days per week and there would be no more than 4 hours per day use of the small oyster dredge. Diver observations by the manager and by the Department's biologist indicate a gravel sand bottom scoured by a strong current and little flora or fauna except a common occurrence of green crabs. The Department's biologist observed only 2 lobsters throughout a dive in August. In his opinion, this was unusual to find so few lobsters at all, during this time of year, if it were prime lobster habitat. The biologist's report indicated that the area is classified as "open" for the harvest of shellfish according to the Department's Public Health Division. According to the biologist's report the local Marine Patrol Officer indicated that there might be some commercial fishing for eel or green crabs. In one public commentator's opinion, the proposed lease would violate a conservation area (Chapter 25.03) for lobsters in the York River by allowing the lease presence and/or use of the small oyster dredge. However, Chapter 25.03 does not prohibit leases, nor does it prohibit the use of drags in the River. The president testified that when towing an oyster dredge at 2 knots that he has observed small lobsters able to move quickly out of the way of a dredge towed at that slow speed. I find that, in the event that a lobster was accidentally caught by the use of the oyster dredge during harvest activities, no violation of Chapter 25.03 would occur if the lobster was immediately liberated alive into the River.³ [The existing lease in the York River is allowed to use drags "appropriate to harvest oysters" (current legal size is up to

³ See, e.g., 12 M.R.S.A. § 6952 providing that no violation of the statute's prohibition on the taking of lobsters by trawl, drag, seine or net shall occur when the lobster is immediately liberated alive in coastal waters.

10.5 feet for scallops and 5.5 for urchins) in certain months of the year and no drag size is stipulated in the public documents.]

For purposes of clarification regarding the impacts of turbidity on striped bass, Deputy Commissioner Lewis Flagg was consulted given his 30 years of experience as director of the Department's Anadromous Fish Division. In his opinion, the use of the small dredge would not impact the striped bass population. For the purpose of clarification on the contribution of sediment build-up by the small oyster dredge, Jay Clement, Senior Project Manager of the Maine office for the US ACOE was consulted. In his opinion, the small dredge would not impact the maintenance dredge schedule of the basin or mouth of the York River. He also confirmed that the sand type sediments tend to settle back to the bottom quickly compared to finer mud type sediments, which would therefore not greatly alter the existing bottom.

Based on the credible opinions of the Department's biologist, the local Harbormaster, Deputy Commissioner Flagg and the ACOE manager, I find that, given the limited use of a small oyster dredge and its described use in the record, the very limited quantity of lobster, and the very limited impact to the local habitat by the small oyster dredge that could impact striped bass, or other local flora and fauna, the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

According to the credible opinion of the DMR's senior biologist knowledgeable about research on turbidity and striped bass described above, the use of the small dredge would not have a significant impact on striped bass or habitat in the York River. The American oyster proposed to be cultured would be obtained from hatcheries or nurseries located within the State of Maine. According to the application, the local flora was limited and no eel grass reported. No live shellfish were observed, only shells on the proposed lease site with some predatory dog whelks and common occurrence of green crabs; one flatfish, one rock crab and 2 lobsters. According to the AEC's report the proposed lease is not located within a Department of Inland Fisheries and Wildlife designated Essential or significant habitat boundary. Given the previous

findings and the above, evidence in the record does not indicate a likelihood of unreasonable interference with the local flora and fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

According to the application only indigenous Maine stocks of the American oysters would be obtained from hatcheries and nurseries located within the State of Maine. The president testified that they would raise only the American oyster and withdraw the request for other shellfish species described in the application. Based on this evidence, I find that there is an available source of American oysters.

According to the AEC's report, the proposed lease would be located approximately one mile south from the public landing located at the Scotland Bridge and is approximately 1422 feet north of the Sewall Bridge. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with the public use or enjoyment and that the proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation given the condition that no activities occur on weekends or holidays from Memorial Day through Labor Day weekends;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area and the condition that only a small oyster dredge and its usage as described in the record by the applicant is allowed;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of the American oysters to be cultured for the lease site; and

6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the requested standard lease of 3.96 acres, as described in the testimony whereby the northwest and southwest corners will be moved easterly to insure this acreage, to the applicant for a period of ten (10) years from the date of this decision for the purposes of cultivating American oysters using bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. This lease shall be conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, recreational boating and fishing and commercial trapping is allowed on the lease;
- (2) dragging is prohibited by persons other than the lease holder who may use a small oyster dredge as described in the record;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard, the DMR regulations Chapter 2.80 with clearly visible marker buoys located at the boundary corners; and
- (4) no activities shall occur on weekends or holidays from Memorial Day through Labor Day weekends.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources